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August 30, 1991

Mr. Herbert A. Levin
Deputy Attorney General
300 South Spring Street, 5th Floor
Los Angeles, CA 90013

Re: Beverly Community Hospital Association v.
Los Angeles County, et al.; LASC No. BC 025781

Dear _____

Thank you for the August 26, 1991, memorandum with attachments.

With respect to the plaintiff's attempted reliance on Revenue and Taxation Code Section 214.05, it is our position that such reliance is misplaced. In our view, the provisions of section 214.05 apply only if all the requirements of section 214, including section 214(a)(3), have been met. If they have been met, then you look at section 214.05. If they have not been met, and if they have not been met because the requirement of section 214(a)(3) has not been met, you apply section 214(a)(3) and find part or all of the property ineligible for the exemption, as the case may be. You do not then apply section 214.05. And section 214.05 is not an alternative to section 214(a)(3) or to section 214. The bases for our view follow.

It has been contended that section 214.05, copy attached, applies to exempt an entire property if monies received do not constitute unrelated business taxable income under applicable federal income tax law. Neither the Legislative Counsel nor staff, however, has construed section 214.05 to exempt an entire property, only a portion of which has been found eligible for the exemption under section 214 and/or 214(a)(3), because monies received from the use of or in conjunction with the use of that property is not unrelated business taxable income under federal income tax law.

The Legislative Counsel's Digest pertaining to section 214.05 as enacted (SB2467/Stats. 1988, Ch. 1606) was as follows:

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"Existing property tax law provides for a welfare exemption under which property used exclusively for various specified purposes and owned and operated by religious, hospital, scientific, or charitable funds, foundations, or corporations meeting specified requirements is exempt from taxation. One of these requirements is that the property be used exclusively for the exempt purposes.

"This bill would provide that if the property of an organization is granted an exemption under the welfare exemption, the property is deemed to be used exclusively for the organization's exempt purposes. However, to the extent that unrelated business taxable income is derived from its use of the property, the property shall be entitled only to a partial exemption based on either of the following...."

Thus, if property meets the requirements of section 214 and is granted the exemption, then to the extent that unrelated business taxable income is derived from the claimant's use of the property, the property is entitled only to a partial exemption.

The Legislative Counsel's Digest is a proper resource to determine the intent of the Legislature (Five v. Chaffey Joint Union High School Dist. (1990) 225 Cal. App. 3d 1548, 1555, and Shelton v. City of Westminster (1982) 138 Cal. App. 3d 610, 614).

Based upon the specific language of the section, and being aware of the Legislative Counsel's analysis, we have similarly construed section 214.05 in the March 21, 1989, letter to Assessors No. 89/22, Exemption Code Sections Affected by 1988 Legislation:

"Section 214.05

"Chapter 1606 (Senate Bill 2407), effective January 1, 1989, adds section 214.05 restricting the welfare exemption where property granted the exemption is also used for activities that generate unrelated business taxable income as defined." (p. 4.)

A copy of Letter to Assessors No. 89/22 is attached.

It has been contended also that Section 214.05 was an alternative to Section 214 (a)(3), which requires that property be used exclusively for the actual operation of an exempt

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activity, and that because a claimant did not generate unrelated business taxable income as the result of use of a property, the entire property should be eligible for the exemption. Such ignores the specific language of Section 214(a)(3); the Legislative Counsel's express acknowledgment thereof, "One of these requirements is that the property be used exclusively for the exempt purposes"; and the specific language of Section 214.05. Such also ignores the facts that Section 214.05 does not eliminate the requirements of, limit or even refer to Section 214(a)(3), and that Section 214.05 as enacted stated in subdivision (e):

"(e) Nothing in this section shall be construed to enlarge the welfare exemption provided in Section 214."

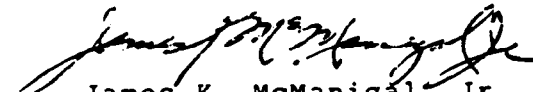
Interpreting Section 214.05 to be in lieu of a Section 214 requirement or requirements would enlarge the welfare exemption, contrary to this express provision of Section 214.05.

Finally in this regard, Section 214.05 was new law. There has been nothing comparable to use of unrelated business taxable income in property tax exemption law until that time, and Section 7 of Stats. 1988, Ch. 1606, which added Section 214.05 to the Code, stated:

"This act shall apply to property taxes levied for the 1989-90 fiscal year and fiscal years thereafter."

Thus, the Legislature specifically provided that Section 214.05 would be prospective only.

Very truly yours,


James K. McManigal, Jr.
Tax Counsel

JKM:ta
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Attachments
cc: Mr. James Barga